U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 04 2013 OFFICE: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an assistant professor of business at The petitioner stated that he would "teach undergraduate courses in management and marketing." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and copies of previously submitted exhibits.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on October 5, 2011. In an accompanying statement, the petitioner stated:

> I and my employers believe that my presence in the United States is in the national interest, and that continued employment as a post-secondary teacher will continue to benefit students of business. I believe I cannot be replaceable by minimally qualified

> US citizens in my teaching profession as that would be detrimental to the quality of education received by US students and would deprive the economy of the fruits of my contributions. . . .
>
> I possess experience, knowledge, and abilities that set me apart from my peers. Many professors in colleges lack managerial experience, which I possess from employment in management positions from 1988 to 2004. . . . Previous employers include [redacted] I bring a wealth of practical experience to the classroom. . . . As president of [redacted] I have managed and coordinated numerous projects and activities in the United States and Africa.

The petitioner submits employer letters and other materials relating to his past experience, but these exhibits do not self-evidently establish that it would be in the national interest to exempt the petitioner from the job offer requirement. The petitioner further stated:

> My past record as an assistant professor of business is exceptional in that I have received favorable evaluations which indicate superior performance when compared to my peers. . . . I have led the business division in preparing and submitting documents related to accreditation of our programs; functioned as chair in the division as assigned by college administration; and chaired the Faculty Credentials and Responsibilities Committee. The division of business was in danger of losing accreditation and I was asked to rescue the situation. . . .

(Evidentiary citations omitted.) The petitioner submitted numerous exhibits in support of the petition, but these exhibits fail to corroborate key claims. For instance, a May 11, 2011 letter from the Accreditation Council for Business Schools and Programs (ACBSP) stated that, having met several stated conditions, [redacted] is now fully accredited." The initially submitted evidence does not, however, support the petitioner's claim to be largely responsible for that accreditation. Even then, the petitioner did not explain how [redacted] accreditation issue was one of national interest, as opposed to the narrower interests of [redacted] and its faculty and students.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Lack of corroboration is a recurring flaw in the petitioner's submissions.

The petitioner stated that he is "the only one in the business division at [redacted] willing and able to offer online courses." The petitioner predicted: "I see possibilities where the courses I offer can be available to many students nationally. This is an area where there is great potential to have an impact nationally by providing tutorial to students throughout the United States." An April 2008 [redacted] news bulletin listed 14 courses to be offered online in the summer of 2008; two of those courses were business courses, both taught by the petitioner. The record does not establish that the

petitioner's online courses have attracted enough students to justify being called national in scope, or indeed that [redacted] would permit large numbers to enroll in those courses. The petitioner's subjective expectations about his own "great potential" in this area do not constitute verifiable evidence.

The petitioner stated that he is poised to serve the national interest through his experience in both academia and business, as well as his "cross-cultural background." The petitioner stated: "I intend to play a significant role in providing a global and international perspective to students of business and exposing students of all ages to global challenges and opportunities. I have more exposure to international trade and practices than an average United States professor of business." Citing various training certificates in the record, the petitioner asserts that he possesses valuable specialized knowledge in subjects such as the "ISO 9000 Quality System," "International Humanitarian Law and the Law of Armed Conflict and Ethics in Peacekeeping," and "Mediation Concepts."

The petitioner asserted that his skills and qualifications are superior to those of many United States workers in his field, but he submitted no objective documentary evidence to allow a meaningful comparison between himself and his peers. It cannot suffice for the petitioner to establish his own credentials and then declare them to be superior to those of others in the field. Furthermore, as explained earlier, exceptional ability – defined at 8 C.F.R. § 204.5(k)(2) as "a degree of expertise significantly above that ordinarily encountered" in a given field – does not imply eligibility for the national interest waiver, because the statutory job offer requirement specifically applies to aliens of exceptional ability. Much of the petitioner's evidence relating to, for example, experience, certification, and membership in professional associations, appears to be geared toward the regulatory exceptional ability criteria at 8 C.F.R. § 204.5(k)(3)(ii). For these reasons, it is not enough for the petitioner to claim or demonstrate that his credentials are superior to those of many United States workers. The petitioner must also show that it is in the interest of the United States, not just the interest of the petitioner, his employer, and its students, to ensure the petitioner's continued work in the United States.

The petitioner stated:

> I have sought to engage in practical projects which have served as examples which I discuss in the classroom. For example, I have coordinated the collection and dispatching of five forty foot containers of goods for distribution to needy people in Africa. . . . Presently, as president of [redacted] I am coordinating a major event to bring [redacted] to the small town of [redacted] as a fundraising project for the 2012 medical missions to Africa. Some of my management and international business students are participating in this project as part of their course assignments. There are numerous opportunities for students of management in the kind of projects I can develop, especially with the prospective participation of students across America.

The record contains various materials from [redacted] "a Christian organization which enables holistic ministry to the village peoples in Sub-Saharan Africa." The

record also includes an advertisement for an appearance by comedian and motivational speaker [redacted] The petitioner did not, however, submit evidence to show that his volunteer activities with SMI have a direct bearing on his intended employment. Involvement with a charitable organization is commendable, but it is not evident how it helps to qualify the petitioner for what is, by definition, an employment-based immigration benefit. The AAO notes that the record contains apparently conflicting information about the petitioner's exact role with [redacted] A letter from a ministry official stated that the petitioner "has been President of the Board of Directors of [redacted] but the first quarter 2012 edition of [redacted] the ministry's newsletter, identified the petitioner as president of the ministry's [redacted] A bulletin from the [redacted] referred to the petitioner as "the director of [redacted]

The petitioner discussed future plans, stating "I intend to coordinate the establishment of a [redacted] in my home country of [redacted] and "I intend to establish an organization called [redacted] I envisage exchange programs, lecture series, charity projects, and other relevant events involving American students and organizations." The petitioner demonstrated no track record to show that, in the past, he had established similar organizations, or that those organizations have had significant beneficial effects that would warrant approval of the national interest waiver.

The director issued a request for evidence (RFE) on January 10, 2012, instructing the petitioner to submit documentary evidence to meet the guidelines set forth in *NYSDOT*. The director found that the petitioner's initial submission had met only the first prong (substantial intrinsic merit) of the precedent decision's three-pronged national interest test. The director acknowledged the petitioner's submission of a variety of types of evidence, but found that the petitioner had not established the significance of much of that evidence.

In response, the petitioner asserted that "a labor certification application will not be able to capture [his] special skills, knowledge and abilities." The petitioner revisits this claim on appeal, and the AAO will address it in that context.

The petitioner contended that his current "position of Assistant Professor of Business" requires "a doctorate in a business discipline." A job announcement that [redacted] posted in [redacted] (after the director issued the RFE) showed this doctoral requirement for an assistant professorship. In a previously submitted letter dated September 22, 2011, [redacted] vice president for Academic Affairs at [redacted] stated that the petitioner "has been employed at [redacted] since January 2005 as an Assistant Professor of Business and Management." The record also shows that the beneficiary did not hold any doctorate until February 2011, when the online [redacted] awarded him "the degree of Doctor of Business Administration." The record, therefore, establishes that [redacted] hired the petitioner six years before he held the doctorate that the job supposedly requires.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

The petitioner submitted a printout from intended to show that the petitioner's business experience distinguishes him from other professors. The printout relates to a professor at ; the petitioner blacked out most, but not all, references to the professor's name. Three out of four user comments noted the professor's lack of "industry experience." The professor teaches not business, but "Media Arts."

included the petitioner in its 2012 booklet of issued the petitioner a certificate calling him "an Outstanding Graduate for 2012," but the booklet shows that chose the petitioner to receive the title. (Thirty-three distance learning institutions each selected one graduate.) The petitioner did not receive the award until January 19, 2012, several months after he filed the petition. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Even then, the record does not establish the significance of this award, for which the "[s]election criteria included the graduates' academic records and the level and quality of their contributions to society and to their chosen professions."

Also issued after the filing date is a January 26, 2012 letter from which begins: "This letter is to provide information and support for [the petitioner's] nomination for the 2012 Teaching Excellence Award awarded by the Accreditation Council for Business Schools and Program [*sic*]." The next two paragraphs of the letter are nearly identical to the body of earlier letter of September 22, 2011, written specifically in support of the petition. Background materials about the award indicated that nominations were due on January 31, 2012, with regional winners to be announced two months later. The nomination shows opinion of the petitioner, because it was that nominated him, but not the petitioner's wider impact or influence on his field.

A letter from director of accreditation for addressed the petitioner's previous claim regarding the accreditation of business program. stated that the petitioner "was one of the primary people responsible for communications with when the Quality Assurance (QA) report for was submitted in 2011." The record appears to indicate that the petitioner's "rescue" of business accreditation consisted of helping to compile the QA report, the submission of which is a requirement for continued accreditation. The petitioner does not explain how participating in the filing of required paperwork, and thereby avoiding a penalty, qualifies him for a special immigration benefit.

The petitioner submitted a copy of a book that he wrote, and indicated that he planned to publish several additional books. The petitioner stated: "I believe that authorship of a book shows a record which can be used to justify projections of future benefit to readers across the United States and beyond." The petitioner also submitted a printout from the online retailer Amazon, to show that the book is available to a national readership. The AAO does not agree that the very act of writing a book demonstrates eligibility for the national interest waiver. The record contains no evidence to show that the book has had any impact or influence on the petitioner's field. According to the Amazon printout, the book was published on January 2, 2012, after the petition's filing date. (The book shows a 2011 copyright date. The petitioner claimed that his immigration status delayed publication, but he did not explain or elaborate.) The petitioner's other planned books did not yet exist at the time the petitioner responded to the RFE, and therefore cannot retroactively show that he was already eligible for the waiver in October 2011; it is too early to say anything about the planned future books.

The record also shows that the petitioner self-published the book. The book itself identified its printer but no publisher, whereas Amazon identified the petitioner himself as the "Independent Publisher." Self-publishing a book does not require peer review, editorial approval, or any of the other safeguards by which the field exercises quality control. The Amazon listing showed no sales ranking, no reviews, and no other indication that anyone had purchased a copy of the book.

The petitioner submitted materials regarding his teaching of online courses for and stated: "I believe that my involvement in online education is a unique skill and ability which a record [*sic*] justifying the potential for future contribution for the benefit of US students nationally." The petitioner did not explain how his "involvement in online education is a unique skill and ability." It is true that online education is a relatively new step in the continuing evolution of higher education, but the record shows that there are dozens of online educational institutions. The petitioner has shown his ability to teach online courses, but this ability is not self-evidently demonstrative of potential future impact upon or benefit to the United States.

The petitioner discussed his business background, including managerial positions, presidency of the and his "role of Chairman of a soccer club." There is no dispute that the petitioner has a varied business background, but the petitioner offered no clear line of logic to show that, because of this background, it is in the national interest for him to teach at He simply asserted, in effect, that individuals with business experience make better business professors.

The petitioner submitted additional information about his work for a number of religious organizations, such as "conduct[ing] a training session for pastors" in and "establishing microfinancing projects and initiating educational activities" through These charitable endeavors, like his work with are volunteer activities outside of his planned employment as a business professor at As explained previously, the petitioner seeks an employment-based immigrant classification, and therefore his eligibility relies on employment-related criteria.

To the extent that the petitioner's religious activities overlap with his work as a business professor, the submitted materials establish his competence, but not significant impact or influence. Witnesses who described the petitioner's work in this area are members of the clergy, rather than business experts. For example, recording secretary of the stated that the petitioner "delivered a lecture on leadership skills to delegates at a seminar facilitated by the in August 2011." praised the lecture as "top notch," but did not indicate that such lectures have had a measurable effect on business in Indeed, he stated "this was the first time such a lecture had been organized."

The petitioner asserted his intention to apply some of the same skills as a professor, for instance by teaching a seminar on microfinancing, but once again this line of reasoning relies not on the petitioner's existing measurable impact and influence, but on the petitioner's future plans and expectations. In a similar vein, the petitioner stated: "It is my intention to establish a consultancy business while I continue as a professor." Intentions and unrealized plans do not show a past history of influence on the field. The petitioner observed: "A professor of business is in a unique position to provide consultancy services to businesses," but this is a general statement that refers to all business professors. The petitioner did not claim any record of achievement as a business consultant; he simply included consultancy on a long and growing list of things he plans to do in the future. Such plans are inevitably contingent on factors beyond the petitioner's control. For instance, the petitioner stated: "I will positively seek to be appointed to the boards of US firms," but the decision on such appointments rests with the firms, not with the petitioner. To qualify for the national interest waiver, the petitioner must be able to describe his future plans and explain how they will benefit the United States, but the petitioner must also demonstrate that his past record shows that his confidence in these plans is well-founded.

The director denied the petition on April 23, 2012. The director acknowledged that business education has substantial intrinsic merit and offers benefits that are potentially national in scope. The director found that the petitioner had not shown, however, "that the national interest would be adversely affected if a labor certification were required for the alien." The director discussed the petitioner's evidence, but found that the petitioner had not shown that this evidence establishes his eligibility for the waiver. For example, the director acknowledged the publication of the petitioner's book, but found that "the very act of publication is not as reliable a gauge as the citation history of published works." The director also acknowledged the petitioner's extensive charity work, but found: "The petitioner has not established how this specifically establishes his impact on the field of business education." The director also noted that many of the petitioner's future plans appear to have little relation to business education.

On appeal, the petitioner states: "Labor certification would cause hiring of person with minimum qualifications despite the benefits I have proven I bring to education field in the United States." When considering the petitioner's hypothetical, speculative claims about what might happen if he were subject to the job offer requirement, the AAO cannot ignore that the self-petitioning alien is the beneficiary of another Form I-140 petition filed by That petition, like the present

petition, seeks to classify the alien as a member of the professions holding an advanced degree, but filed its petition with an approved labor certification. USCIS records show that applied for labor certification on June 19, 2012 and filed its petition on August 29, 2012, and that the director approved that petition eight days later on September 6, 2012; the whole procedure took less than three months. Therefore, the petitioner is already the beneficiary of an approved petition, with labor certification, in the same immigrant classification that he seeks in the present proceeding. Any assertions about possible difficulties posed by the labor certification process are moot. The pitfalls the petitioner foresaw did not occur, and therefore the AAO need not proceed as if they might occur.

The petitioner states:

> I believe I submitted evidence to show that I am highly qualified in the field of business, that I have a track record of practical experience in business management (which makes me a better teacher); and that I have received recognition for my achievements in the teaching field. I submitted various evidence to show how my exposure and various accomplishments are helpful in advancing the field of business education or in making me a better practitioner of business.
>
> Application of business knowledge in practical projects is an important element of the professional development of a college professor, hence my involvement in various projects. . . . I showed how the various accomplishments and projects have an impact on students and the field of education.

Elaborating on the above claims, the petitioner asserts that his book contains "useful information for US exporters, students, and teachers." The issue is not the petitioner's own opinion about the usefulness of his book, but rather how the book has affected the petitioner's field. The record shows that the book is available, but it does not show that the book is in widespread use or that it has influenced anyone at all. Also, as stated before, the petitioner did not publish the book until after the petition's filing date, and therefore it cannot show his impact on the field as of that date.

The petitioner resubmits a list of online courses that he has taught, and states that he "was one of the pioneers of online education at The petitioner may well have been one of the first to teach online courses at but his impact on his employer does not necessarily translate into wider influence on a national scale. As the petitioner acknowledges, "online education is . . . fast becoming standard practice." He himself earned his doctorate online. The petitioner has not shown that he was responsible for any innovations or improvements in online education. He has shown only that he is one of a growing number of instructors who teach courses online. Following and embracing existing trends do not establish eligibility for the waiver.

The petitioner maintains that his charity work has taught many of the same managerial and organization skills that he teaches at It remains that the petitioner must show not only that such teaching took place, but that its effect stands out to a degree that warrants a finding that it is in the national interest for the petitioner to continue performing such work in the United States. General

assertions about the importance of teaching particular skills speaks to intrinsic merit, rather than distinguishing the petitioner from others in his field.

The petitioner repeats prior assertions about his involvement with [redacted] accreditation. He states: "When schools are sanctioned for failure to meet accreditation requirements, students suffer." It is true that failure to meet those requirements is a sign of negligence, but the national interest waiver rests on more than simply an absence of negligence. The petitioner has not shown that it is rare for a school to successfully maintain [redacted] accreditation, or that to do so requires more than filling out routine (if complex) paperwork. Performing a function that is admittedly expected of every accredited institution does not set the petitioner apart in a meaningful way.

Throughout this proceeding, the petitioner has shown that he is an active and experienced educator. He has not, however, shown that his achievements elevate him above others in his field. Rather, he has simply listed his achievements and declared that they so elevate him, without objective, verifiable evidence to support his interpretations of the evidence. The petitioner has claimed that the labor certification process would disrupt his employment and thereby harm the progress of business education in the United States, whereas subsequent events have proven that labor certification was readily available. The petitioner is now the beneficiary of an approved immigrant petition in the same classification that he sought in the present proceeding.

The dismissal of the present appeal does not affect the approval of [redacted] more recent petition on the alien's behalf, because that petition did not involve the national interest waiver. Therefore, this dismissal is without prejudice to the alien's ability to adjust status based on the approved petition.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.